

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RUEBIN KENNEDY,

Plaintiff,

Civil Action No.:

-against-

NOTICE OF REMOVAL

JOE OROCHENA and YRC INC. d/b/a YRC FREIGHT,

Defendants.
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**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Defendants, JOE OROCHENA and YRC INC. d/b/a YRC FREIGHT, by their undersigned attorneys, file this notice and petition this Court to remove the above-captioned case to the United States District Court for the Southern District of New York and respectfully show this Court:

1. A civil action was commenced on or about October 21, 2021, by RUEBIN KENNEDY (hereafter “Plaintiff”) against defendants JOE OROCHENA and YRC INC. d/b/a YRC FREIGHT (hereinafter “Defendants”) by filing a Summons and Complaint in the Supreme Court of the State of New York, Bronx County. This action is captioned *Ruebin Kennedy v. Joe Orochena and YRC Inc. d/b/a YRC Freight*, and bears State Court Index Number 814430/2021E. A copy of the Summons and Complaint is annexed hereto as **Exhibit “A.”** In sum, this civil action alleges personal injuries sustained in a motor vehicle accident that occurred on September 21, 2021, at 4070 Boston Road, in Bronx County, New York¹.

¹ As detailed herein, Plaintiff subsequently sought to amend his Complaint to change any reference to 4070 Boston Road, County of Bronx, State of New York, to 3530 Noell Avenue, County of Bronx, State of New York.

2. On December 1, 2021, the Defendants served a Verified Answer, a copy of which is annexed as **Exhibit “B.”** Simultaneously, Defendants served Combined Demands, including a Demand for Ad Damnum, a copy of which is annexed as **Exhibit “C.”**

3. In Plaintiff’s Response to the Combined Demands, including Demand for Ad Damnum, Plaintiff conveyed her demand of \$50,000,000. Plaintiff’s response to the Demand for Ad Damnum is annexed as **Exhibit “D.”**

4. While Plaintiff’s response to Defendant’s Demand for Ad Damnum is dated March 31, 2021, the envelope in which Plaintiff’s response was mailed shows that the documents were not mailed until April 14, 2022. A copy of the envelope containing the referenced response to Defendants’ Demand for Ad Damnum, which bears the clear postmark of April 14, 2022, is annexed hereto as **Exhibit “E.”**

5. As evidenced by the date stamped on Plaintiff’s responses upon defense counsel’s receipt of same, Defendants did not receive Plaintiff’s responses to discovery demands and requests, including the Demand for Ad Damnum, until April 18, 2022. A copy of the referenced date stamp is annexed hereto as **Exhibit “F.”**

6. As Plaintiff’s service of his response to Defendants’ Demand for Ad Damnum on April 14, 2022 (with defense counsel’s receipt on April 18, 2022), represents his first conveyance of his demand in excess of \$75,000.00, this motion is timely pursuant to 28 U.S.C. § 1446(b)(3).

7. Plaintiff seeks damages for personal injuries allegedly caused by the Defendants’ negligence in the amount of \$50,000,000. Accordingly, the amount in controversy in this suit is in excess, exclusive of interest and costs, of \$75,000. *See* 28 U.S.C. § 1332 (a).

8. There is complete diversity of citizenship between the plaintiff and the defendants:

- a. From the date of the alleged incident on September 21, 2021, through present, Plaintiff Ruebin Kennedy has been a resident and domiciliary of the State of New York, residing at 2698 Frederick Douglass Boulevard, Apartment #2D, New York, New York 10030. *See* Plaintiff's Bill of Particulars at ¶ 1, annexed hereto as **Exhibit "G."**
- b. From the date of the alleged incident on September 21, 2021, through present, defendant JOE OROCHENA has been a resident of the state of New Jersey, residing at 15 1st Street, Unit 1, Lodi, New Jersey 07644.
- c. On the date of the alleged incident on September 21, 2021, defendant YRC INC. d/b/a YRC FREIGHT's principal address was in Kansas, at 10990 Roe Avenue, Overland Park, Kansas 66211, with a subsequent move to its present principal address in Tennessee, at 501 Commerce Street, Suite 1120, Nashville, Tennessee 37203.

9. Because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000, this action is one over which the United States District Court has original jurisdiction pursuant to 28 U.S.C. § 1332. Therefore, the action can be removed to this Court pursuant to 28 U.S.C. § 1441.

10. Written filing of this motion will be given to the plaintiff promptly after the filing of this motion, as required by law.

11. A true and correct copy of this motion will be filed with the Clerk of the Supreme Court of the State of New York, Bronx County, promptly after the filing of this motion, as is required by law.

12. Attached to this motion, and by reference made a part hereof, are true and correct copies of all process, pleadings and orders filed in the aforesaid action as required by 28 USC § 1446(a).

13. The annexed documents also include the parties' Stipulation, dated May 11, 2022, permitting Plaintiff to amend his Complaint to change any reference to 4070 Boston Road, County of Bronx, State of New York, to 3530 Noell Avenue, County of Bronx, State of New York. A copy of the Stipulation is annexed hereto as **Exhibit "H."** As the Stipulation was filed without the proposed Amended Complaint, the Court issued a Notice on behalf of Hon. Veronica G. Hummel, A.J.S.C., directing plaintiff to submit the proposed amended pleading to the Court for review. A copy of the Court Notice, dated May 11, 2022, is annexed hereto as **Exhibit "I."** Plaintiff subsequently filed the proposed Supplemental Summons and Amended Complaint on May 12, 2022, a copy of which is annexed hereto as **Exhibit "J."** A copy of plaintiff's Verified Bill of Particulars is annexed hereto as **Exhibit G.**

14. Additional documents include Plaintiff's Notice to Admit (**Exhibit "K"**), Defendants' Response to Notice to Admit (**Exhibit "L"**), and the Preliminary Conference Order and Case Scheduling Order issued by Hon. Veronica G. Hummel, A.J.S.C. (**Exhibit "M"**).

15. By filing this Notice of Removal, Defendants do not waive any defenses which may be available to them, specifically including, but not limited to, their right to contest in personam jurisdiction over the petitioners, improper service of process upon them, and the absence of venue in this Court or in the court from which the action has been removed.

WHEREFORE, Defendant prays that this action be removed to this Court and proceed in this Court as an action properly removed thereto.

Dated: White Plains, New York
May 13, 2022

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:



Brian J. Matthews (BM-0422)
Attorneys for Defendants
JOE OROCHENA and YRC INC. d/b/a
YRC FREIGHT
1133 Westchester Avenue
White Plains, New York 10604-3407
(914) 323-7000
18872.00037

TO: ELEFTERAKIS, ELEFTERAKIS & PANEK
Attorneys for Plaintiff
80 Pine Street – 38th Floor
New York, NY 10005